

Retailers' Occupation Tax does not apply where the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in Illinois to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made. See 86 Ill. Adm. Code 130.605. (This is a GIL).

May 17, 2000

Dear Xxxxx:

This letter is in response to your letter dated April 17, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing to ask your opinion as to whether a certain type transaction would subject the buyer or seller to Illinois Use Tax or Retailers Occupation Tax. The transaction is described as follows:

A purchaser hires a common or contract carrier to pick up tangible personal property in Illinois from an Illinois seller or his representative for delivery to the purchaser outside the State of Illinois. The bill of lading issued with respect to the transaction would show the Illinois vendor or his representative as the consignor and the purchaser or his representative as the consignee.

Illinois regulations seem to say that an independent carrier is not considered a representative of a purchaser for purposes of determining tax. The regulations provide as follows:

- (1) 'Nor does the tax apply to gross receipts from sales in which the seller, by carrier (when the carrier is not also the purchaser) or by mail, under the terms of his agreement with the purchaser, delivers the goods from a point in this State to a point outside this State not to be returned to a point within this State.' (86 Ill. Adm. Code, Ch. I, Sec. 130.605(c)).
- (2) The regulation dealing with property originating outside of Illinois, assumes a fact stated as follows:

'that the purchaser or his representative (not an independent carrier engaged in business of transporting property for hire) first received physical possession of the property in Illinois.' (86 Ill. Adm. Code, Ch. I, Section 130.610a, 1, B). (Emphasis applied)

It seems an agreement (Bill of Lading), between the buyer and seller showing that the seller is shipping via a common or contract carrier and the buyer is receiving the goods out of state is sufficient to indicate a sale in interstate commerce not subject to Illinois tax, no matter who pays for or hires independent common or contract carrier.

We have attached a letter issued by the Department dated December 15, 1997 (ST 97-0603-GIL) that is not clear with respect to this issue, but creates a question as to whether the mere hiring of the common carrier by the out of state purchaser is sufficient to give rise to Illinois tax. It is our understanding that the tax does not apply when goods are received by an independent common or contract carrier in Illinois for delivery to a purchaser outside of Illinois, if the Illinois vendor or his representative is the consignor and the out of state purchaser or his representative is the consignee on the bill of lading used for the transaction. Further, it is our understanding that who hires the common carrier is not decisive with respect to taxability.

The Illinois Supreme Court favorably cites a Department Private Letter Ruling (81-0264) that provides, in part, as follows:

'[A seller is] considered to be the shipper to the out-of-state destination, with the purchaser first receiving the physical possession of the property outside Illinois, if [the seller is] shown as the consignee or shipper on the bill of lading even if the purchaser contracted with the carrier for the transportation service and pays the carrier directly.' Union Electric Company v. Department of Revenue, 136 Ill.2d 385, 556 N.E.2d 236 (1990).

Based upon the regulations and the Union Electric Decision, we ask that you confirm our understandings that delivery to an independent contract or common carrier by an Illinois seller for delivery to an out-of-state location (where the seller or his representative is the consignor and the buyer or his representative is the consignee on the bill of lading) does not subject the parties to Illinois tax.

Thank you for your help and cooperation.

When tangible personal property is located in this State at the time of its sale and then is physically delivered in Illinois to the purchaser or the purchaser's representative, the gross receipts received by the seller are subject to Retailers' Occupation Tax if the sale is at retail. See the

enclosed copy of 86 Ill. Adm. Code 130.605(a). However, subsection (b) of this regulation states that Retailers' Occupation Tax does not apply where the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods from a point in Illinois to a point outside Illinois, not to be returned to a point within Illinois, provided that such delivery is actually made.

In addition, subsection (c) of Section 130.605 states that Retailers' Occupation Tax does not apply where the seller ships goods by carrier or by mail, according to the terms of the agreement with the purchaser, and the seller delivers the goods from a point in Illinois to a point outside Illinois not to be returned to a point within Illinois. Such sales are considered to be sales in interstate commerce and are exempt from Retailers' Occupation Tax.

If an Illinois retailer, under the terms of the retailer's agreement with the purchaser, transports tangible personal property to a common carrier or other independent carrier (when the carrier is also not the purchaser) for delivery outside this State, not to be returned to a point within this State and such delivery is actually made, then the transaction is exempt from Retailers' Occupation Tax by virtue of being in the stream of foreign commerce. To properly document such an exemption, the Illinois retailer must retain copies of the bill of lading or other shipping documents evidencing that the retailer is the shipper or consignor and the out-of-State purchaser or its representative is the recipient or consignee. It makes no difference who hires or pays the common carrier or other independent carrier as long as the bill of lading or other shipping documents show the Illinois retailer as the shipper or consignor and the out-of-State purchaser or its representative as the recipient or consignee.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.